

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

LIANA SEXTON et al.	:	
	:	
Plaintiff	:	CIVIL ACTION NO. 16cv01594
v.	:	
	:	Honorable James M. Munley
JDK MANAGEMENT COMPANY, L.P.	:	
AND JDK MANAGEMENT	:	ELECTRONICALLY FILED
COMPANY, INC.	:	
	:	
Defendants	:	

**DEFENDANTS’ ANSWER TO PLAINTIFF’S COMPLAINT AND
AFFIRMATIVE DEFENSES**

Named Defendants, by and through its undersigned counsel, state the following as their Answer to the Complaint in this matter.

JURISDICTION AND VENUE

1. Denied. By way of further answer, the allegation in this Paragraph constitutes a conclusion of law to which no responsive pleading is required.
2. Denied. By way of further answer, the allegation in this Paragraph constitutes a conclusion of law to which no responsive pleading is required.
3. Denied. By way of further answer, the allegation in this Paragraph constitutes a conclusion of law to which no responsive pleading is required.

PARTIES

4. Admitted, upon information and belief.

5. Admitted.

6. Admitted.

7. Denied.

8. Denied. By way of further answer, the allegations of this Paragraph constitute conclusions of law to which no responsive pleading is required.

FACTS

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

COLLECTIVE AND CLASS ALLEGATIONS

16. Defendants admit that Plaintiff brings her FLSA claim pursuant to 29 U.S.C. § 216(b). However, Defendants deny that they in any way violated the FLSA and that Plaintiff is entitled to the relief requested in her Complaint. By way of further answer, Defendants deny the remaining allegations of this Paragraph.

17. Denied. By way of further answer, the allegations of this Paragraph constitute conclusions of law to which no responsive pleading is required.

18. Defendants admit that Plaintiff brings that Plaintiff brings her PMWA claim pursuant to Federal Rule of Civil Procedure 23. However, Defendants deny that they in any way violated the FLSA and that Plaintiff is entitled to the relief requested in her Complaint. By way of further answer, Defendants deny the remaining allegations of this Paragraph.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied. By way of further answer, the allegations of this Paragraph constitute conclusions of law to which no responsive pleading is required.

COUNT I
(Alleging Violations of the FLSA)

24. Defendant incorporates its responses from paragraphs 1-23 above, as if set forth fully here.

25. Admitted.

26. Denied. By way of further answer, the allegations of this Paragraph constitute conclusions of law to which no responsive pleading is required.

27. Denied. By way of further answer, the allegations of this Paragraph constitute conclusions of law to which no responsive pleading is required.

28. Denied. By way of further answer, the allegations of this Paragraph constitute conclusions of law to which no responsive pleading is required.

COUNT II
(Alleging Violations of the PMWA)

29. Defendant incorporates its responses to paragraphs 1-28 above, as if set forth fully here.

30. Admitted.

31. Denied. By way of further answer, the allegations of this Paragraph constitute conclusions of law to which no responsive pleading is required.

32. Denied. By way of further answer, the allegations of this Paragraph constitute conclusions of law to which no responsive pleading is required.

RESPONSE TO JURY DEMAND

Defendants dispute that Plaintiff is entitled to a jury trial regarding whether Defendants violated willfully the FLSA. *See* 29 U.S.C. § 260.

RESPONSE TO PLAINTIFF’S PRAYER FOR RELIEF

In response to Plaintiff’s “Wherefore” clause, Defendants incorporate their responses from Paragraphs 1-32 above as if set forth fully here. Defendants deny specifically that they are liable to Plaintiff under any law or legal theory or that Plaintiff is entitled to the relief sought.

AFFIRMATIVE DEFENSES

Defendants state the following as defenses to the Complaint without assuming the burden of proof on any such defenses that would otherwise rest on Plaintiff and with the reservation of Defendants' right to amend or supplement its response to the Complaint as information is obtained through discovery.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's allegations fail to state a claim for violation of the FLSA. Specifically, Plaintiff premises her FLSA claim on the allegation that expos do not interact with customers. However, the FLSA does not require that employees interact with customers to receive tip pool funds.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's allegations fail to state a claim for violation of the PMWA. Specifically, Plaintiff premises her PMWA claim on the allegation that expos do not interact with customers. However, the PMWA does not require that employees interact with customers to receive tip pool funds.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claimed damages would constitute a windfall inasmuch as the measure of damages Plaintiff proposes far exceeds the amount of money Plaintiff paid to expos as part of the challenged tip pool procedure.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claimed damages would constitute a windfall inasmuch as Plaintiff received the statutory minimum wage as required by both Federal and State law.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of estoppel, offset, unclean hands, and laches.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred inasmuch as the Named Defendants are not her "employers" as defined under Federal or State law.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's allegations are barred in whole or in part because her claims are not representative of the proposed class.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because expos interact with customers.

TENTH AFFIRMATIVE DEFENSE

Defendants' alleged actions or omissions in this matter do not constitute a willful violation of the FLSA.

Defendants reserve the right to add any additional defenses as they become known through discovery or further investigation.

Respectfully Submitted,

BARLEY SNYDER LLP

Dated: September 16, 2016

/s/ Richard L. Hackman

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Attorneys for Named Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Defendants' Answer to Plaintiff's Complaint and Affirmative Defenses was filed electronically and is available for viewing and downloading on the Court's CM/ECF system this 16th day of September, 2016.

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